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STATE FOR INR/AA RITA BYRNES

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SUBJECT: FLOOR-CROSSING VERDICT OUT - GOVERNMENT COULD LOSE
PARLIAMENTARY SEATS

¶1. (SBU) Summary: Malawi's Constitutional Court has issued a ruling which could cause over eighty members of Parliament, most of them associated with President Mutharika,s DPP, to lose their seats. The ruling was delivered on November 7 and has been appealed to the Supreme Court. If the ruling is upheld and acted upon by the Speaker, it could completely overturn the balance of power in Parliament, and would require by-elections to fill potentially dozens of vacant seats. End Summary.

¶2. (U) The Mutharika administration asked the Constitutional Court in October 2005 to examine Section 65 of the constitution, which restricts the ability of Members of Parliament to change parties, or "cross the floor," and permits the Speaker of Parliament to declare vacant the seats of MPs who change allegiances. The GOM argued that Section 65 violated other provisions of the constitution that protect freedom of association, and should be declared invalid. Mutharika initiated the move to allow as many opposition MPs as possible to join his new Democratic Progressive Party (DPP) without fear of losing their seats. At that time, an injunction was granted that blocked the Speaker of Parliament from taking action until the Court ruled on the matter.

¶3. (U) The Constitutional Court ruled that Section 65 is constitutional and can be applied by the Speaker of Parliament in the broadest manner possible. The Court, which is composed of three High Court judges, stated that any MP joining another party after being elected or accepting a ministerial position in a government controlled by another party is considered to have "crossed the floor." Such a member,s seat can then be declared vacant by the Speaker, necessitating a by-election to fill the seat.

¶4. (SBU) The ruling was immediately appealed by the government, and will now be looked at by the Supreme Court. This process could take months, as the Malawian judicial system is often exceedingly slow. According to one of Malawi's top legal experts, the Supreme Court will have a difficult time overturning the ruling, as the legal rationale for it was clearly laid out by the Constitutional Court.

¶5. (SBU) Comment: Until this point, Malawi's judiciary had almost always appeared willing to maintain the status quo in legal or constitutional cases, often erring towards the side of caution on politically-charged matters. This ruling is a clear departure from that trajectory. The justices cited the original intent of Section 65, which was to restrict the excessive shifting of politicians from one party to another, and to protect the rights of the voters who expect their representatives to serve under the party and platform by

which they are elected. With this ruling, the court is sending a clear signal that the constitution does not condone the chameleon-like behavior of Malawian politicians, who since the late 1990s have constantly shifted alliances and jumped from one party to another.

16. (SBU) If the Supreme Court upholds the ruling and the Speaker chooses to act, it could have wide-ranging consequences for the government. Mutharika's DPP is the biggest potential loser, with as many as 70 seats at risk of being declared vacant. But other parties risk losing seats as well, particularly those of prominent opposition figures who have taken positions as cabinet ministers. The Speaker would be put under tremendous pressure from all sides to remove MPs or maintain the status quo, and it is unclear at this point which way he would move. Either way, we expect the ruling to put a temporary freeze on any MPs considering joining government before the next parliamentary session, as the country waits to hear from the Supreme Court on the matter. End Comment.

EASTHAM